

Application No.: 10/598026
Filing Date: October 18, 2007

REMARKS

Claims 1-11, 13-20, and 22-23 were pending in the present application, Claim 11 having been withdrawn. In this Response, Claims 1, 8, 10, 18-20, and 23 have been amended, Claim 11 has been cancelled, and Claims 24-26 have been added. Accordingly, Claims 1-10, 13-20, and 22-26 are pending for consideration.

Election/Restrictions

The Office Action stated that Claim 11 is drawn to a nonelected invention and that a complete reply must include cancellation of nonelected claims or other appropriate action. Claim 11 has been cancelled herein.

Claim Objections

The Office Action objected to Claim 8 because of the misspelling "secoond." The typographical error has been corrected in the amended claims above. Applicants therefore request withdrawal of the claim objection.

Claim Rejections Under 35 U.S.C. § 112

The Office Action rejected Claims 1-11, 13-20, and 22 under 35 U.S.C. § 112, second paragraph, as indefinite. Specifically, the Office Action rejected Claim 1 as lacking antecedent basis for the limitation "said humidified gases" and Claims 19 and 20 as lacking antecedent basis for "said transportation means." Claim 1 has been amended herein to recite "humidified gases," and Claim 19 has been amended to recite "a gas conduit."

The Office Action also stated that it is unclear whether the claim elements "transportation means" in Claim 19 and "humidification means" in Claim 20 invoke 35 U.S.C. 112, sixth paragraph. Without commenting on the rejection and solely to expedite prosecution, Claim 19 has been amended to recite "gas conduit" and Claim 20 has been amended to recite "humidifier." Applicants therefore request withdrawal of the rejections under 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. § 102

The Office Action rejected Claims 1 and 23 under 35 U.S.C. § 102(b) as anticipated by WO 02/074372 to Papania et al. Applicants respectfully traverse the rejection because Papania fails to teach all of the claim language.

For example, Claim 1 has been amended to recite, among other things (emphasis added):

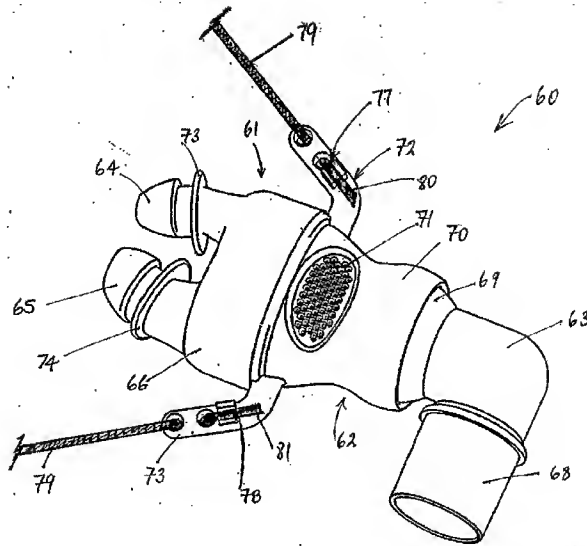
1. A breathing assistance apparatus comprising:
a nasal cannula . . . comprising:
at least one prong shaped to fit within the user's
nare . . . and
*a plurality of apertures configured to externally
vent gases exhaled by the user through the user's nare.*

In contrast, Papania discloses an aerosol delivery device including a nasal prong for the administration of agents, such as vaccines, nasally or orally. See pg. 7, lns. 18-22; pg. 10, lns. 4-6. Papania fails to disclose a nasal cannula comprising "a plurality of apertures configured to externally vent gases exhaled by the user through the user's nare."

Claim 23 has been amended to recite, among other things (emphasis added):

23. A breathing assistance apparatus comprising:
a nasal cannula . . . defining a longitudinal axis along its
length;
said nasal cannula comprising at least one prong . . . ,
said at least one *prong comprising a first portion extending
substantially parallel to the nasal cannula's longitudinal axis to a
transition point where the at least one prong is configured to enter
the user's nare, and a second portion configured to extend inside
the user's nare from the transition point at an angle with respect to
the nasal cannula's longitudinal axis . . .*

As shown in Figure 9 of the present application, reproduced below, prongs 64, 65 extend parallel to a longitudinal axis of the nasal cannula 60, then change direction at approximately the location of elements 73, 74 and extend at an angle with respect to the longitudinal axis of the nasal cannula and the first portion of the prongs.



The specification explains that “flanges 73, 74 are at a position on the prongs 64, 65 such that the each of the flanges rests against the outside of each of the patient’s nares.” Pg. 9, Ins. 21-22. Figures 4A-4C of Papania show a nasal prong having a curved shape; however, Papania fails to disclose that the prong is configured to extend longitudinally to a point where the prong enters the user’s nare and then extend at an angle inside the user’s nare.

Therefore, Claims 1 and 23 distinguish over Papania for at least these reasons.

Claim Rejections Under 35 U.S.C. § 103

The Office Action rejected Claims 1-10, 13-20, and 22-23 under U.S.C. § 103(a) as obvious over US Patent No. 6,644,315 to Ziaee in view of Papania. Applicants respectfully traverse the rejections because Ziaee, alone or in combination with Papania, fails to teach or suggest all of the claim language.

Claim 1

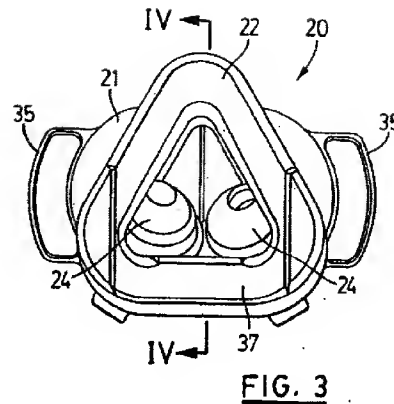
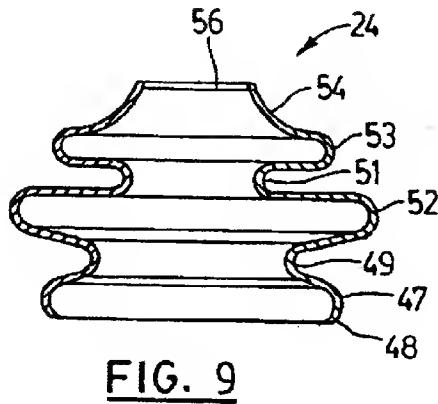
For example, Ziaee fails to teach or suggest “a nasal cannula . . . comprising . . . *a plurality of apertures configured to externally vent gases exhaled by the user through the user’s nares*” as recited in Claim 1. As explained above, Papania fails to cure this deficiency. The present application explains that the “plurality of apertures 71 . . . acts as a bias flow outlet vent. Therefore, any gases exhaled by the user **through** their nose will exit through the apertures 71.” Pg. 10, lns. 1-3.

In contrast, Ziaee merely discloses that “the shell 21 is provided with a small vent hole 57 in a lower portion of the bridge portion 36 of the shell, so that excessive pressure does not build up within the shell 21, for example when the mask 20 is applied and tightened to the user’s face. If desired, this hole 57 may be plugged with a tight-fitting resilient e.g. rubber plug.” Col. 5, lns. 21-26. The vent hole 57 therefore acts as an optional pressure relief safety mechanism while the plurality of apertures of Claim 1 are designed to allow for the escape of exhaled gases in normal operation.

Therefore, Claim 1 distinguishes over the applied art for at least these reasons. Claims 2-10, 13-20, and 22 depend from Claim 1. Therefore, Claims 2-10, 13-20, and 22 distinguish over the applied art for at least the same reasons discussed above with respect to Claim 1. In addition, Claims 2-10, 13-20, and 22 distinguish over the applied art for the unique combinations of features recited in those claims.

Claim 23

Ziaee and Papania also fail to disclose a nasal cannula having at least one prong *“comprising a first portion extending substantially parallel to the nasal cannula’s longitudinal axis to a transition point where the at least prong is configured to enter the user’s nare, and a second portion configured to extend inside the user’s nare from the transition point at an angle with respect to the nasal cannula’s longitudinal axis”* as recited in Claim 23. In contrast, Ziaee discloses nasal pillows 24 having “tapering tip portions 54” (shown in Figure 9 below) that “engage snugly and in a leak free manner within the nostrils of a patient.” Col. 4, lns. 62-64. However, Figure 3, reproduced below, shows the entirety of the nasal pillows 24 angling toward each other.



Therefore, for at least these reasons, Claim 23 distinguishes over the applied art.

New Claims

New Claims 24-26 have been added herein. Claims 24 and 25 depend from Claim 23 and therefore distinguish over the applied art for at least the same reasons discussed above with respect to Claim 23. Claims 24 and 25 also distinguish over the applied art for the unique combinations of features recited in those claims.

New Claim 26 distinguishes over the applied art because the applied art fails to teach or suggest all of the claim language. For example, Claim 26 recites, among other things (emphasis added):

26. A breathing assistance apparatus comprising:
a nasal cannula . . . defining a longitudinal axis along its length and comprising:
a body; and
at least one prong . . . ;
wherein said at least one prong extends from the body substantially parallel to the nasal cannula's longitudinal axis and bends at a point where the at least one prong is configured to enter the user's nare, said at least one prong configured to extend inside the user's nare at an angle with respect to the nasal cannula's longitudinal axis.

For reasons similar to those discussed above with respect to Claim 23, the applied art fails to disclose a nasal cannula “*wherein said at least one prong extends from the body substantially parallel to the nasal cannula's longitudinal axis and bends at a point where the at least one prong is configured to enter the user's nare, said at least one prong configured to extend inside the user's nare at an angle with respect to the nasal cannula's longitudinal axis*” as

Application No.: 10/598026
Filing Date: October 18, 2007

recited in Claim 26. Therefore, Claim 26 also distinguishes over the applied art for at least these reasons.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 16, 2011

By: Andrew I. Kimmel/

Andrew I. Kimmel
Registration No. 58,855
Attorney of Record
Customer No. 20995
(949) 760-0404

12279625
111511